

**INGHAM COUNTY HEALTH DEPARTMENT REGULATION AMENDING
THE SANITARY CODE BY ADDING CHAPTER VII
REGULATIONS FOR THE INSPECTION OF ONSITE WATER AND
SEWAGE DISPOSAL SYSTEMS AT THE TIME OF PROPERTY TRANSFER**

PREAMBLE: The maintenance of residential wells and septic systems is essential to the protection of public health and protection of the surface and ground water.

WHEREAS: The Ingham County Health Department will initiate action to resolve known surface water contamination problems; and the maintenance, and repair or modification of existing residential on-site septic systems and/or on-site water supply systems to prevent surface water pollution and potential ground water contamination; and,

WHEREAS: The Health Officer recommends the adoption of this regulation requiring the inspection and when necessary the repair and/or upgrading of onsite residential water supply and sewage treatment systems; and,

WHEREAS: Several meetings were held with Realtors, well drillers, inspectors, general public, municipalities, and septage haulers during the development of the regulation; and,

WHEREAS: Notice of a public hearing was given in accordance with Section 2442 of the Public Health Code, [MCL 333.2442] not less than 10 days before the public hearing and not less than 20 days before adoption of this Regulation.

THEREFORE BE IT RESOLVED, that the Board of Commissioners of the County of Ingham, Michigan, having considered the comments made at this public hearing on April 25, 2006, approves the following regulation, as an amendment to the Ingham County Sanitary Code, being Chapter VII. Regulation # 06109.

SECTION 701

Purpose

Sec. 701.1 The Ingham County Board of Commissioners approves this Regulation that states procedures, standards and enforcement that shall govern any residential premises containing an Onsite Water and/or Sewage Treatment System, (“OWSTS”) in order to promote the safety, health and general welfare of the community as follows:

- a) Ensure a safe, adequate supply of drinking water for those homes served by an Onsite Water Supply System (“OWSS”); and/or
- b) Ensure the adequate treatment of sewage from homes served by an Onsite Sewage Treatment System (“OSTS”); and

c) This Regulation shall not require existing systems that are currently in substantial conformance but do not meet existing construction standards, to be brought into compliance with such standards.

Rules Adopted

Sec. 701.2 This Regulation contains minimum standards and supplements the Rules and Regulations enacted by the Michigan Department of Environmental Quality and Ingham County. In addition, this Regulation supplements Michigan law as it relates to public health and environmental quality, and shall supersede all local minimum standards previously enacted that are inconsistent with this Regulation.

Authority

Sec. 701.3 This Regulation is enacted pursuant to MCL 333.2441 to protect the public health, safety and welfare of the citizens of Ingham County.

Jurisdiction

Sec. 701.4 The Health Officer shall have jurisdiction to administer and enforce the provisions of this Regulation. Nothing in this Regulation, however, shall be construed to restrict or abrogate the authority of the state, any municipality, or incorporated city, village or township in Ingham County to adopt standards that are more restrictive. However, whenever an inspection relating to health or sanitation is required, no municipality shall issue a permit without first having obtained written approval from the Health Officer indicating that the applicant has complied with the minimum requirements of this Regulation.

Effective Date

Sec. 701.5 This Regulation shall become effective in Ingham County 45 days after approval and notice of its adoption by the Ingham County Board of Commissioners is published in a newspaper of general circulation within Ingham County, provided, however, that actual inspections shall not begin before **June 9, 2006**, to insure that a sufficient number of inspectors are certified and available.

SECTION 702

Definitions

Sec. 702.1 The following rules of language shall apply to the text of this Regulation: The word “shall” is mandatory. The word “may” is permissive. When not inconsistent with the context, words in the present tense shall include the future, and words designating singular numbers shall include the plural.

Words and Terms

Sec. 702.2 The following words and terms used in this Regulation, unless otherwise expressly stated, shall have the following meaning:

Authorized Agent: The term “Authorized Agent” shall mean any individual or entity authorized, in writing, to act as the legal representative in all matters authorized by the seller or purchaser.

Certified Inspector: An individual authorized by the Department to provide evaluation(s) for compliance with this Regulation.

Department: Refers to the Ingham County Health Department.

Failure: The term “failure” is defined as follows: 1) the backup of sewage into a structure; 2) discharge of effluent onto the ground surface; 3) the connection of an OSTS to a storm drain; 4) liquid level in the septic tank above the outlet invert; 5) structural failure of a septic tank; 6) the discharge of sewage into any stream or other body of water; 7) unsafe potable water sample; and 8) substantial nonconformance with water well construction requirements and well isolation from pollution source requirements.

Health Officer: The term “Health Officer” shall mean the Health Officer, the acting Health Officer or his/her duly authorized representative.

Municipality: The term “municipality” shall mean any city, village, or township within Ingham County.

OSTS: The term “OSTS” shall mean an onsite sewage treatment system.

Owner: The term “Owner” shall mean any person who has legal title to any premises.

OWSS: The term “OWSS” shall mean an onsite water supply system.

OWSTS: The term “OWSTS” shall mean an onsite water and/or sewage treatment system.

Person: The term “person” shall mean any individual, firm, partnership, party, corporation, company, society, association, or other legal entity.

Premises: “Premises” shall mean any tract of land, or portion thereof, or combination of tracts of land under single or common ownership, operation or control, that contains a structure that is, was or will be inhabited either permanently or transiently, or an OWSTS.

Septage Hauler: The term “septage hauler” shall mean a firm licensed by the State of Michigan for the purpose of removing septic tank waste and properly disposing this waste.

Substantial Conformance: The term “Substantial Conformance” shall mean that the OWSTS meets with the current or past construction codes or regulations and presents minimal threat to degradation of groundwater and surface water or risk to the public health.

Substantial Nonconformance: The construction and location of an OWSTS which does not meet with current or past construction codes or regulations and represents a significant risk to the degradation of the groundwater and surface water, and/or poses a risk to the public health.

SECTION 703

Limitations on Sale or Transfer of Property

Sec. 703.1 There shall be no sale, transfer, or conveyance of a parcel containing an OWSTS until the following conditions are met:

- a) The seller must file an application with the Department for an evaluation of the OWSTS,
- b) The Department determines, based upon such evaluation, that the OWSTS is in substantial conformance and acceptable, or any necessary remediation is completed, or assured and accepted; and
- c) The Department issues a letter of compliance for this sale.

Evaluation

Sec. 703.2 Each OWSTS in Ingham County shall be inspected and evaluated prior to the sale. Transfers exempt from inspections include:

- a) Transfer from a spouse.
- b) Change in ownership solely to exclude a spouse.
- c) Transfer subject to life lease or life estate, (until the life lease or life estate expires).
- d) Transfer to effect foreclosures or forfeiture of real property.
- e) Transfer into a trust where the settlor or the settlor's spouse conveys property to the trust and is also the sole beneficiary of the trust.
- f) Transfer creating or ending joint ownership if at least one person is an original owner of the property or his or her spouse.
- g) Transfer to establish or release a security interest, i.e. pay off mortgage.
- h) Premises built within the previous twenty-four months prior to date of property transfer, i.e. newly constructed home with system approved by the Department.
- i) Premises that shall be demolished and shall not be occupied after the property transfer.
- j) New homes that have not been occupied.
- k) Municipal Sanitary Sewer and/or municipal water service will be available within three (3) months, and system is not failing. Affidavit will be required.
- l) Refinance of mortgage connected to the property.
- m) A property which receives a final inspection approval by the Department for either an on site water supply system or septic system during the previous twelve (12) months.

After the 12 month period has passed and the Department has not received a notice of deed transfer, the Department will notify the owner and/or applicant that the letter of approval has expired. At that time, the owner and/or applicant will have sixty (60) days to request a follow up inspection and if the inspection demonstrates conditions have not changed, an extension of the initial letter of approval for the property will be issued by the Department. This extension will not exceed twelve (12) months from the expiration date of the initial approval letter.

The owner of premises containing an OWSTS shall have the system evaluated by a Department certified inspector or Department staff. Persons certified to perform evaluations of an OWSTS shall meet the minimum standards in Sec. 703.6 of this Article. After the evaluation is complete, the Department shall issue a letter to the owner or the owner's designated representative (Section 703.1 c) and any prospective purchaser describing the functional status of the OWSTS and whether it is in conformance with the Ingham County rules and regulations governing the supply of groundwater and the treatment of sewage. A Michigan licensed septage hauler shall provide proof of service and an evaluation report to the owner and the Department.

Sec. 703.3 Reports of evaluations shall include, but are not limited to:

- a) The address of the site;
- b) The parcel identification number;
- c) The name of the owner or owner's agent;
- d) The location of the system(s);
- e) A description of the current operational or functional status of the system(s);
- f) Identification of any necessary repairs or replacement of all portions of the system(s);
- g) The results of potable water tests as required by the Department;
- h) Other relevant or unusual observations related to the system(s);
- i) Completed forms approved by the Department.

Sec. 703.4 A copy of the inspector's evaluation report of an OWSS shall be provided to the owner and a copy filed with the Department. Such reports shall be available to the public through the Freedom of Information Act, MCL 15.231 et seq.

Performance Standards

Sec. 703.5.1 The evaluation shall determine whether the system(s) have failed, are failing or in substantial nonconformance and affects the public health and environment, or violates any other applicable rules or regulation.

Sec. 703.5.2 The evaluation shall determine whether the OSTS structure and its operational status are in substantial conformance at the time of installation and with the Ingham County rules and regulations governing the treatment of sewage.

Sec. 703.5.3 OWSS shall be evaluated for:

- a) Their proximity to sources of pollution;
- b) Substantial conformance with State of Michigan construction standards at the time of installation; and,
- c) Compliance with National Primary Drinking Water Standards, with a minimum requirement for bacteria, nitrate, and arsenic tests or other water samples deemed necessary by the Department.

Sec. 703.5.4 Water samples shall be collected and analyzed at a laboratory certified by the Michigan Department of Environmental Quality.

Sec. 703.5.5 Certified Inspectors will not be allowed to perform system repairs for either well or septic systems which they have inspected.

Registration and Certification

Sec. 703.6 All inspectors performing evaluations under this Regulation must be registered with the Department and certified before undertaking any evaluations. All qualified inspector applicants must file an application with the Department, pay the County registration fee annually, and satisfactorily complete a training course approved by the Department. Prospective inspectors must demonstrate knowledge of construction practices and operational standards, as well as the causes and indicators of OWSS and/or OSTS (OWSTS) failures. Inspectors shall provide proof of commercial general liability insurance. No evaluation reports shall be accepted from individuals not certified by the Department.

Sec. 703.7 The Department or designated representative may de-certify any inspector under one or more of the following circumstances:

- a) The individual fails to comply with the Regulation;
- b) The individual is unable to properly perform an evaluation of an OWSTS;
- c) The individual is negligent in the discharge of his/her duties as outlined in the certification requirements;
- d) The individual submits false or misleading information;
- e) Significant information is missing from the evaluation report and/or is not provided within three (3) business days after being requested by the Department; or, but not limited to the above examples;

f) The Department determines that the individual has otherwise demonstrated professional incompetence.

g) The inspector does not maintain the required certification as required by this Regulation.

Sec. 703.8 The Department shall give written notice to an inspector before he/she is de-certified. The inspector shall be given an opportunity at an informal meeting with the Department and/or the Health Officer to demonstrate why he/she should not be de-certified. Any inspector who is de-certified may appeal that decision by following the procedure in Section 711 of this Regulation.

Sec. 703.9 If an inspector is de-certified, re-certification shall be contingent upon completing the requirements established by the Department.

SECTION 704

Responsibilities of Various Parties

Owner

Sec. 704.1 Owners are responsible for hiring certified inspectors to perform inspections and licensed septic haulers to service septic tanks under this Regulation prior to the sale of any premises that he/she owns. The owner must also secure a letter from the Department indicating the OWSTS complies with this Regulation before the sale or transfer of any premises that he/she owns. Owners are responsible for maintaining the OWSTS on their property and shall notify the Department if an evaluation report and/or septage hauler report indicates a failure and/or substantial nonconformance of the system.

Ingham County Health Department

Sec. 704.2 The Responsibilities of the Department are as follows:

- a) Administer and enforce this Regulation;
- b) Maintain the most current OWSTS evaluation report as long as the property is served by an OWSTS and for three years thereafter;
- c) Maintain a list of certified inspectors and licensed septage haulers;
- d) Require remediation where there is evidence of a failure or substantial nonconformance of a system;
- e) Create and maintain a database of systems inspected, evaluated and remediate;
- f) Establish criteria for the inspection of OWSTS and the certification of inspectors, and make such criteria and related forms available to the public;
- g) Issue a letter of compliance for the sale, transfer or conveyance of property;

h) Provide certified inspectors existing essential information pertaining to the property to be evaluated;

i) Provide educational material(s) about system(s) maintenance that have been approved by the Department; and,

i) Make recommendations to extend the life of the system(s) and to prevent the premature failure of the sewage system(s);

k) Prepare an annual report to present to the Board of Commissioners including number of inspections completed, number of failing systems found, number of systems in conformance or substantial nonconformance and number of repairs completed.

SECTION 705

Fees

Sec. 705.1 Fees to cover expenses, including but not limited to overhead, labor, storage, training etc., by the Department, shall be adopted as provided in the Public Health Code (Act 368 of 1978 as amended). Fees shall be paid when inspection reports are filed with the Department. Fees must be paid before the property is transferred.

SECTION 706

Failure/Substantial Nonconformance

Sec. 706.1 When as OWSTS is in substantial nonconformance or failure, the owner, agent or other responsible party shall contact the Department and shall complete all repairs ordered by the Department.

SECTION 707

Inspection Notification

Sec. 707.1 If, after reviewing the inspection, the Department determines that the OWSTS is not in substantial conformance as defined, the property owner shall be subject to enforcement as provided in this Regulation. The Department shall review, make a determination and issue a written notice within 5 business days from the date the complete report is filed with the Department by the inspector. Any party is considered notified if the notice is sent to that party's last known mailing address or to the property address if the party occupies the premises with the non-conforming OWSTS.

SECTION 708

Corrective Action

Sec. 708.1 Upon receiving written notice from the Department of failure or substantial nonconformance of a system, the owner, buyer or authorized agent shall, within thirty (30) days, submit a proposed corrective action and contract for services in order to bring the affected system into substantial conformance with applicable laws. If needed, the owner, buyer or

authorized agent shall place into an escrow account a deposit of a surety or performance bond or cash in an amount equal to one and one-half times the estimated cost of the contract guaranteeing performance of such contract. The Department shall review the proposed corrective action and amend it as required to conform to federal, state and local laws, rules and regulations. All necessary corrective action shall be completed within one hundred eighty (180) days following Department approval of the proposed corrective action plan. Once the Department gives final approval of the completed corrective action, the system shall be deemed to be in substantial conformance with this Regulation and any affidavit previously filed with the Register of Deeds shall be discharged.

If an OWSTS presents an immediate health hazard, the owner or other responsible party shall take such measures, in cooperation with the Department that will immediately reduce or eliminate the impact of a system failure until the full remediation plan can be implemented as described earlier in this Paragraph.

Sec. 708.2 A person who disputes any Department decision concerning the violation of this Regulation shall have the right to a hearing and appeal using the appeals process in Section 711. Any appeal shall not stay an owner's, buyer's or authorized agent's obligation to take measures to reduce or eliminate the impact of a system failure/substantial nonconformance until a full remediation plan can be determined and implemented.

SECTION 709 Enforcement and Compliance

Sec. 709.1 If, after investigation, the Department believes that a person is in violation of this Regulation, the Department shall attempt to enter a voluntary agreement with the property owner to resolve the violation. If a voluntary agreement cannot be reached, the Department may issue a violation notice to the owner. A statement of fact upon which the notice is based shall accompany the violation notice.

Sec. 709.2 The Department may, after presenting proper credentials and other documents as may be required by law, and upon stating the authority and purpose for the investigation, enter and inspect any property at reasonable times to ascertain compliance or noncompliance with this Regulation or Rules promulgated under this Regulation. This may include:

- a) Inspection at reasonable times of any parcel containing an OWSTS and related systems; and,
- b) Collection of evidence and information for the purpose of determining compliance with this Regulation or Rules promulgated under the Regulation.

Sec. 709.3 If an owner, transferee or purchaser does not comply with the requirements of this Regulation, a Health Officer or his/her duly authorized representative may record an affidavit that details the non-compliance with the Ingham County Register of Deeds.

SECTION 710 Specific Enforcement Options

Violation of the Regulation

Sec. 710.1 After learning that this Regulation has been violated, the Health Officer or his/her designated representative may:

- a) Issue a Cease and Desist Order and/or suspend any permit, certificate or other approval issued pursuant to this Regulation to the owner or other party violating this Regulation and afford the owner or other interested party notice and opportunity for hearing.
- b) Request that Ingham County Prosecutors Office or Ingham County Corporation Counsel file a legal action to enjoin the violation. In addition, the Health Officer may seek to recover any and all costs related to correcting, removing or abating the violation.

Issuance of Monetary Civil Penalties

Sec. 710.2 If the Department believes that a person is in violation of a provision of this Regulation or an order issued pursuant to this Regulation, the Department may issue a citation within ninety (90) days after the alleged violation is discovered. The citation shall state with particularity the nature of the violation, including reference to the Section of the Regulation alleged to have been violated, the civil penalty established for such violation, if any, and a right to appeal the citation pursuant to MCL 333.2462 and Section 711 of this Regulation. The citation shall be delivered or sent by registered mail to the alleged violator.

- a) Any party issued a citation may, within twenty (20) days from the date the citation is issued, request an administrative hearing at which time the person may indicate why he/she believes that he/she has not violated this Regulation. After the administrative hearing, the Health Officer may affirm, dismiss, or modify the citation. The decision of the Health Officer shall be final, unless an appeal is filed with the Ingham County Board of Commissioners or its designated committee.
- b) Any party issued a citation may appeal the citation to the Ingham County Board of Commissioners or its designated committee within sixty (60) days after the Health Officer's final decision is issued. The appeal shall be conducted in accordance with Section 711.
- c) A person aggrieved by a final decision of the Health Officer or the Ingham County Board of Commissioners or its designated committee, may petition the Circuit Court of Ingham County for review. The sixty (60) day time period for appeal shall begin to run the day after the date of such final decision.

Schedule of Monetary Civil Penalties

Sec. 710.3 Monetary civil penalties may be imposed according to the following schedule:

- a) First violation: \$200.00
- b) Second violation: \$500.00
- c) Third and subsequent violations each: \$1,000.00

Sec. 710.4 A civil penalty levied under this Section may be assessed for each violation or day that violation continues. The civil penalty may be for a specified violation of this Regulation or promulgated rule that the Health Officer has the authority and duty to enforce.

Sec. 710.5 A decision by the Health Officer not to issue a citation shall not be construed as a waiver of any other rights or remedies authorized by law or this Regulation.

Conviction of Misdemeanor

Sec. 710.6 Any person who violates this Regulation is guilty of a misdemeanor, punishable by imprisonment for not more than ninety (90) days, or a fine of not more than \$200.00 or both. Conviction by jury, court or voluntary plea and acceptance by court under this provision shall not waive any other claim for fines, costs, injunction or other relief authorized by this Regulation. Each day that a violation of this Regulation exists shall constitute a separate offense.

Assessment against the Property

Sec. 710.7 If an owner does not have his/her property evaluated as specified by this Regulation the Department shall cause an inspection to be performed and may charge all costs and fees for the evaluation to the owner of the premises.

Sec. 710.8 If the owner or party violating this Regulation refuses on demand to pay such expenses incurred by the Department to abate, correct or remove a violation, unsanitary condition or nuisance, the sum shall be assessed against the property and shall be collected and treated in the same manner as taxes assessed under the general tax laws of this state.

Right to Obtain Samples

Sec. 710.9 An inspection under Sec.709.2 shall include the right to obtain samples where the Department has reason to believe that there is a likelihood of pollution of surface water, ground water, or water supply. Upon written notice, an owner or occupant of premises from which such inspection is sought shall cooperate with the Department or his/her designated representative.

SECTION 711

Hearings and Appeals

Sec. 711.1 If an owner or interested party is adversely affected by any decision under this Regulation he/she may request in writing a Hearing before the Ingham County Board of Commissioners or its designated committee within thirty (30) days of the date of such decision. The Department shall issue a Notice of Hearing within fifteen (15) days after receiving the request. A Hearing shall then be held at the next regular meeting of the Ingham County Board of Commissioners or its designated committee, scheduled for such purposes; provided, however, that a Hearing shall be conducted no later than sixty (60) days after the Notice of Hearing is mailed to the owner or interested party. The Ingham County Board of Commissioners or its designated committee shall affirm, dismiss or modify the contested decision by a majority vote of the Board or committee. The decision by the Ingham County Board of Commissioners or its designated committee shall be in writing and state the reasons and grounds for such decision. A copy shall be furnished to the owner, any interested person, and the Department within thirty (30) days of the decision.

SECTION 712
Miscellaneous Provisions

Severability

Sec. 712.1 Each provision of this Regulation must be interpreted in a way that is valid under Michigan law. If any provision is held invalid, the rest of the Regulation shall remain in full effect.

Sec. 712.2 All amendments to this Regulation shall be approved by the Ingham County Board of Commissioners after a public hearing required by Section 2442 of Act 368 of the Public Acts of 1978, as amended, has been held before the Board of Health. All amendments shall become effective at a time provided for under Michigan law.